

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 INDECK KEYSTONE ENERGY,)
4 LLC, a Delaware limited)
5 liability company,) **CONFIDENTIAL**
6 Plaintiff,) **CIVIL ACTION**
7 vs.) **No. 04-CV-325E**
8 VICTORY ENERGY OPERATIONS,) **Judge Sean J. McLaughlin**
9 LLC, a Delaware limited)
10 liability company,)
11 Defendant.)

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13 The videotape deposition of JOHN VISKUP taken on
14 behalf of the Plaintiff before Pamela B. Stinchcomb,
15 Certified Shorthand Reporter in and for the State of
16 Oklahoma, on the 1st day of February, 2006, in the
17 City of Tulsa, State of Oklahoma, pursuant to the
18 stipulations of the parties.

19
20 **ORIGINAL**

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1 Q. And Count 2 was for breach of contract
 2 based on alleged violations of the exclusivity
 3 provision, correct?
 4 A. Correct.
 5 Q. Is VEO seeking any money damages associated
 6 with its claim in Count 3 for intentional
 7 interference with contractual relations?
 8 A. Yes.
 9 Q. What is the amount of financial damages?
 10 A. It's undetermined right now.
 11 Q. Can VEO identify any specific sales that
 12 were lost as a result of the alleged interference
 13 with contracts set forth in Count 3?
 14 A. We do know that there was a missed
 15 opportunity for a -- an alternative fuel boiler that
 16 Christian Power put together and missed opportunity
 17 by ways of them not representing our company any
 18 more, we weren't given that opportunity. It was for
 19 a large project that we -- we consider to be in that
 20 marketplace in a very competitive way and we weren't
 21 given that opportunity that he developed.
 22 Q. What was the alternative fuel?
 23 A. It was a project and I believe it was for
 24 Hereford [sic] ethanol.
 25 Q. Was that an HRSRG?

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1 A. Yes.
 2 Q. That project did not involve a Keystone
 3 boiler, did it?
 4 A. I don't know.
 5 Q. Can you identify any other potential
 6 damages experienced by VEO?
 7 A. I know that we sold -- we have an
 8 aftermarket parts and sales group at Victory Energy
 9 and, of course, since Christian Power is not our rep
 10 any longer, we don't have the ability to sell parts
 11 in that territory and had he still been the rep, we
 12 definitely would have.
 13 Q. Can you quantify in any way the lost sales
 14 associated with the alleged inability to sell parts
 15 in the territory?
 16 A. I can't at this point.
 17 Q. Can you identify any other alleged
 18 financial damages experienced by VEO under Count 3?
 19 A. The only other one would be -- give me one
 20 second. The only other missed opportunities were
 21 through a company called PSI Power Systems in
 22 Michigan and the termination of their representative
 23 agreement with us did not provide us the ability to
 24 offer proposals for a period of time.
 25 Q. Can you identify any specific sales that

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1 were lost as a result of PSI no longer being a sales
 2 rep?
 3 A. The Michigan project we know.
 4 Q. Anything else?
 5 A. I believe the Notre Dame project through
 6 interference with -- with Indeck and IKE.
 7 Q. Anything else?
 8 A. No, not right now.
 9 Q. As VEO's authorized representative, can you
 10 identify a specific amount of money damages
 11 associated with Count 3?
 12 A. I believe we're going to leave that to
 13 expert testimony.
 14 Q. Has VEO retained an expert to quantify
 15 damages under Count 3?
 16 A. I don't believe we have at this point.
 17 Q. Has VEO undertaken any attempt at
 18 quantifying its money damages under Count 3?
 19 A. I think it's an ongoing process right now.
 20 Q. Has it undertaken any attempt to the
 21 present to quantify money damages under Count 3?
 22 MR. SHEEAN: Objection, asked
 23 answered.
 24 A. I don't have anything else to add to that.
 25 Q. (By Mr. Gisleson) Pardon me?

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1 A. I don't have anything else to add.
 2 Q. Can you identify anything that VEO has done
 3 in an effort to quantify damages under Count 3?
 4 MR. SHEEAN: Objection, asked and
 5 answered.
 6 A. Other than with our attorney, no.
 7 Q. (By Mr. Gisleson) Is VEO seeking any
 8 damages under Count 4 of its counterclaim?
 9 A. No.
 10 MR. SHEEAN: Let's take a break.
 11 (break was taken)
 12 A. I need to correct one of my last
 13 statements. I was looking at Count 5 when you were
 14 talking about Count 4. The pages kind of came
 15 together but -- so we do, yes.
 16 Q. (By Mr. Gisleson) What is the claim in
 17 Count 4?
 18 A. Count 4 is violation of California business
 19 and professional code.
 20 Q. What are the money damages that VEO seeks?
 21 A. Money damages are anything that's been sold
 22 from Christian Power for the termination of his
 23 representative agreement with us to present day time.
 24 Q. Can you quantify that in any way as you sit
 25 here today as VEO's authorized representative?

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1 A. I know Alan had mentioned to us that it was
2 worth well north of 150, \$150,000 a year to them.

3 Q. That Alan Christian's business?

4 A. That would he profited from that, and so
5 profits brought to the company would be in excess of
6 that.

7 Q. Alan Christian told VEO that his profits
8 exceeded \$100,000 from his aftermarket parts
9 business?

10 A. Yes. And also during the period of time
11 Alan hasn't been a rep of ours, we have not had
12 opportunities to sell projects in his territory. He
13 was successful for a project with us through, you
14 know, several hours and days of preparation and
15 bidding on the King County project. So there were
16 several projects that probably didn't get opportunity
17 to bid on.

18 Q. Can you identify the projects for which VEO
19 did not have an opportunity to bid?

20 A. There was I know a couple of projects that
21 he was working on with a large engineering firm. His
22 territory name escapes me right now. I can't think
23 of the name of him at the moment. SNC Lavalin,
24 sorry.

25 Q. Any others?

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1 A. Not that I know of right now.

2 Q. VEO, in fact, submitted a bid to SNC
3 Lavalin, didn't it?

4 A. We had in the past.

5 Q. Was this a new project for SNC Lavalin?

6 A. I'm not sure. I don't remember.

7 Q. Had VEO ever obtained a contract from any
8 of its prior proposals to SNC Lavalin?

9 A. No.

10 Q. So that VEO had no prior experience getting
11 a contract from SNC Lavalin; is that correct?

12 A. Correct.

13 Q. Can VEO quantify its money damages
14 associated with Count 4?

15 A. Not at this time.

16 Q. Alan Christian of CPI had a sales rep
17 agreement that permitted him to terminate at any time
18 for any reason; is that correct?

19 A. CPE?

20 Q. CPE?

21 A. Yes.

22 Q. Are there any other bases for damages that
23 VEO can identify under Count 4?

24 A. Not that I can recall right now.

25 Q. Is VEO seeking damages under Count 5?

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1 A. I don't believe so at this time.

2 Q. Are there any other damages under any claim
3 that VEO is seeking from IKE?

4 A. I'm not aware of any more at this
5 particular time.

6 Q. Under Item 23, that is VEO's use and/or
7 attempted acquisition and/or use of the Iron [sic]
8 City Ironworks name or mark. Do you see that?

9 A. Erie City Ironworks?

10 Q. Yes.

11 A. Is that what you mean? Yes.

12 Q. Has VEO ever utilized the name Erie City
13 Ironworks?

14 A. No.

15 Q. Does VEO claim ownership in any way to the
16 name Erie City Ironworks?

17 A. No.

18 Q. Has VEO ever attempted to register the name
19 Erie City Ironworks?

20 A. I believe we were, yes.

21 Q. When?

22 A. I don't want to speculate. I'm not sure.
23 It was probably a year or two ago.

24 Q. April 2004?

25 A. I don't know.

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1 Q. Why did VEO seek to register the Erie City
2 Ironworks name?

3 A. As I said yesterday, this was during the
4 time when as we moved forward in the attempt to
5 purchase the Keystone technology, we just thought
6 that this would be a good -- a good name to use
7 possibly. It was abandoned and -- but we decided --
8 decided against it. We've never used it since then.

9 Q. Why did VEO believe that Erie City
10 Ironworks was a good name to use?

11 A. It was along with the same lines of
12 bringing a boiler back off the shelf, the old retro,
13 if you will, concept of the boiler being an old
14 boiler and just keeping along with that.

15 Q. Did Erie City Ironworks have an established
16 reputation in the marketplace?

17 A. I don't know.

18 Q. Did you believe that people who were
19 knowledgeable concerning boilers knew the Erie City
20 Ironworks name?

21 A. Some people may have, yes.

22 Q. How did you learn of the name?

23 A. I learned of the name when I worked at
24 Indeck and I heard, you know, through several -- I
25 believe even in the Keystone brochure it leads on to